

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	CASE NO.
	)	
vs.	)	CR 20-326-JFW
	)	
JOSE LUIS HUIZAR, et al.,	)	
	)	PAGES 1 TO 57
DEFENDANTS.	)	
	)	

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REPORTER'S TRANSCRIPT OF  
MOTION TO COMPEL  
MONDAY, APRIL 25, 2022  
9:02 A.M.  
LOS ANGELES, CALIFORNIA

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1                   **LOS ANGELES, CALIFORNIA; MONDAY, APRIL 25, 2022**

2                   **9:02 A.M.**

3                   ---

09:01AM

5                   THE CLERK:   Calling item 3, CR 20-326(A)-JFW,

6                   United States of America versus Jose Luis Huizar, et al.

7                   Counsel, please state your appearances.

8                   MR. JENKINS:   Good morning, Your Honor.

09:02AM

9                   Mack Jenkins, Veronica Dragalin, Special Agent Andrew Civetti,

10                  and Cassie Palmer on behalf of the United States.

11                  MS. ALÉ:   Good morning, Your Honor.   Carol Alé,  
12                  Adam Olin, Charles Snyder from the Office of the Federal Public  
13                  Defender's Office on behalf of Mr. Huizar who is present at  
14                  counsel table.

09:02AM

15                  MR. BRAUN:   Good morning, Your Honor.

16                  Harland Braun, B-r-a-u-n.   I'm alone with Mr. Ray Chan who is  
17                  present.

18                  MR. NEUMAN:   Good morning, Your Honor.

09:02AM

19                  Ariel Neuman for Dae Yong Lee whose waiver is on file and

20                  940 Hill, LLC.

21                  MR. STEINGARD:   Good morning, Your Honor.

22                  Richard Steingard for Shen Zhen New World I, LLC.

09:03AM

23                  THE COURT:   Good morning to all.   We have on

24                  calendar this morning the defendant's Motion to Compel

25                  production of cooperator devices and accounts, communications

1 between the Government and cooperators and/or their counsel.  
2 That motion was filed on March 3rd of 2022, and it appears as  
3 docket No. 381. The Government filed its opposition which  
4 appears as docket No. 418. And the defendants filed a reply  
09:03AM 5 which appears as docket No. 430. The parties also filed  
6 pursuant to my request a joint statement regarding the  
7 defendant's Motion to Compel. That was filed on April 18th and  
8 appears as docket No. 431.

9 In the motion, the defendants move for an order  
09:03AM 10 to compel the Government to disclose exact duplicate forensic  
11 copies of the imaged devices and e-mail cloud storage and any  
12 accounts in the Government's possession belonging to the nine  
13 individuals that are identified or named in the motion. I will  
14 refer to that portion of the motion as the motion directed to  
09:04AM 15 the witness and cooperator devices.

16 The second category, the defendant moves to  
17 compel production of all communications and evidence of  
18 communications including scheduling notices, nonprivileged  
19 notes, or other documentation of communications between the  
09:04AM 20 Government and -- in this section there are 14 named  
21 individuals, and I will refer to this portion of the motion as  
22 the witness and cooperator communications.

23 The defendants argue that the information they  
24 seek is subject to disclosure under Rule 16 and  
09:05AM 25 *Brady versus Maryland*. They claim that the requested materials

1 are in the possession, custody, and control of the Government  
2 and material to their defense. The Government argues that the  
3 witness and cooperator devices are not within its possession,  
4 custody, or control for purposes of Rule 16. The defendants  
09:05AM 5 have not met their burden of demonstrating the materiality.

6 With respect to the witness and cooperator  
7 communications, the Government argues that the defendants have  
8 failed to establish materiality, and that the Government has  
9 already provided discoverable materials and will continue to do  
09:05AM 10 so consistent with their obligations under *Brady* and *Giglio*.

11 The legal standard applicable to this motion is  
12 undisputed. Although there is no general constitutional right  
13 to discovery in a criminal case, there are three sources  
14 establishing the Government's disclosure obligations.

09:06AM 15 Federal Rule of Criminal Procedure 16 establishes  
16 guidelines for pretrial production of certain limited materials  
17 including items material to preparing a defense. In addition,  
18 under *Brady* and *Giglio*, the Government must disclose to the  
19 defense evidence in its possession that is exculpatory or  
09:06AM 20 favorable to the defense or that may be used for impeachment  
21 purposes. Such evidence includes material that bears on the  
22 credibility of a significant witness in the case.

23 In addition, under Section 3500, the *Jencks* act  
24 statements made by a Government witness that relate to the  
09:06AM 25 subject matter of the witness's testimony are required to be

1 disclosed after the witness has testified.

2 I will hear argument from counsel. The items  
3 that -- I don't think I need any argument. I think the papers  
4 adequately cover the witness and cooperator devices. But I  
09:07AM 5 will hear from the defense with respect to the other category  
6 of items which are the cooperator communications with respect  
7 to the 14 identified individuals in the motion.

8 Who's going to argue the motion on behalf of the  
9 defense?

09:07AM 10 MS. ALÉ: I am, Your Honor.

11 THE COURT: All right. I can tell you that I had  
12 a very difficult time following the motion, and specifically on  
13 page 14 where you argue the existing discovery illustrates how  
14 cooperator and witnesses' testimony changed throughout the  
09:08AM 15 investigation. And you go on to explain or use citing to two  
16 examples, one with respect to the interviews of Morrie Goldman  
17 and, two, the interviews with respect to Businessperson A. Is  
18 Businessperson A -- I can never remember whether we're still  
19 operating under these acronyms or --

09:08AM 20 MS. DRAGALIN: For now, yes, Your Honor, we would  
21 still like to use Businessperson A.

22 THE COURT: What are the initials of  
23 Businessperson A?

24 MS. DRAGALIN: A.W.

09:08AM 25 THE COURT: That's what I thought.



1 All right. The difficulty I have is there -- you  
2 cite to the Goldman 302. There's apparently -- in support of  
3 your argument I represent -- I understand this is just one  
4 example to support your argument, but it's probably the most  
09:09AM 5 important one. You don't attach the December 5th, 2018, 302  
6 which is, as I understand it, the first proffer by Mr. Goldman  
7 to the Government. You do cite to 365, Exhibit 1, which is the  
8 ex parte application for the Rule 17 subpoenas.

9 In any event, I was able to find the 302. It was  
09:10AM 10 actually attached but not attached to the motion. But what I  
11 was not able to find is the comparison and the quotes or the  
12 characterization of the second proffer which took place in  
13 January -- it looks like it's January 16th of 2019.

14 The then 302 was not only not attached to the  
09:10AM 15 motion, but I could not find anywhere where the January 16th  
16 302 -- if it is part of this record. In addition, you didn't  
17 attach a copy of the transcript of the partial recording that  
18 was made by Mr. Goldman's attorney during the course of the  
19 first proffer on December 15th, 2018. I was able to locate  
09:11AM 20 that which was not at 341, Exhibit 1, but was the -- attached  
21 to the reply in support of the motion to suppress  
22 attorney/client which was filed in January which looks like  
23 it's docket No. 349.

24 In addition, you argue that the various proffers  
09:11AM 25 show how the -- your argument is how the witness's testimony

1 was apparently shaped, but you refer to the plea agreement that  
2 was entered into by Mr. Goldman. But again, the plea agreement  
3 is not attached to the motion.

4 So I had a difficult time trying to figure out  
09:12AM 5 what -- because I wanted to obviously check the accuracy of  
6 your representations made in paragraph 14. And I did check  
7 them, and I found that some of them, at least in my view, are  
8 not accurate and certainly overstated that, for example, you  
9 indicate that, when the Government interviewed Mr. Goldman on  
09:12AM 10 December 5th of 2018, Goldman was unequivocal that there was no  
11 quid pro quo. He consistently rejected any suggestion that  
12 Huizar engaged in bribery including with Company M. I have  
13 read that 302, and I understand your argument, but I don't  
14 think it is entirely accurate.

09:13AM 15 So I will hear from you. And I can also tell you  
16 that, in my search for these various documents, I had occasion  
17 to review Mr. Snyder's declaration which was filed on  
18 February 2nd of 2022 and appears as docket No. 65. And this  
19 was in support of the ex parte application for an order issuing  
09:13AM 20 early return of subpoena duces tecum. And my memory serves me  
21 this was the efforts to obtain the recording that Mr. Meister,  
22 who was representing Mr. Goldman during the course of the  
23 initial proffer, had made. Or at least it's a partial  
24 recording. I guess I can't find that we ever ruled on this  
09:14AM 25 ex parte application. I assume that that issue was resolved

1 and everybody now has a copy of the audio recording?

2 MR. SNYDER: No.

3 THE COURT: Pardon me?

4 MR. SNYDER: No. It wasn't resolved.

09:14AM 5 THE COURT: It wasn't resolved?

6 MR. SNYDER: No.

7 THE COURT: You still don't have a copy of it?

8 MR. SNYDER: No.

9 THE COURT: You have a transcript.

09:14AM 10 MR. SNYDER: We have a transcript of the second  
11 half of the interview that the Government recorded. We don't  
12 have a transcript of the part that -- the missing audio.

13 THE COURT: Okay. And Mr. Meister, he has  
14 possession of it?

09:15AM 15 MR. SNYDER: Yes.

16 THE COURT: Is he refusing to give it to you?

17 MR. SNYDER: So here -- the issue that occurred  
18 was --

09:15AM 19 THE COURT: You're going to have to get to the  
20 mic. Why don't you remain seated and just pull the microphone  
21 to you. I have a hard time with the sound system in this  
22 courtroom understanding you.

23 MR. SNYDER: So the issue that occurred was  
24 there's a full recording which, according to the Government,  
09:15AM 25 Mr. Meister believes has privileged portions on it. And we

1 asked the Government for that recording, and ultimately there  
2 was a breakdown because the Government said that it was going  
3 to redact the privileged portions of the recording that  
4 Mr. Meister had turned over to it.

09:15AM

5 And our position was, well, since he turned it  
6 over to you and he said, why don't you guys redact these  
7 privileged portions, and since they're not actually part of the  
8 same team, he had waived privilege as to those. So we wanted  
9 the full recording. And it's our understanding that he's not

09:16AM

10 willing to turn over the full recording. So that's why we  
11 applied for a subpoena to the Court.

12 THE COURT: And so what is Exhibit 1 that's  
13 attached to docket No. 349?

09:16AM

14 MR. SNYDER: If that's the transcript -- so what  
15 happened was they started the proffer, and the proffer wasn't  
16 being recorded. At some point during the proffer --

17 THE COURT: At least the Government didn't think  
18 it was being recorded.

09:16AM

19 MR. SNYDER: Right. Right. It wasn't being  
20 openly recorded. Obviously I wasn't there, so, you know,  
21 either Mr. Jenkins or Ms. Dragalin or Mr. Civetti would be the  
22 people to tell you what actually happened. My understanding is  
23 at some point they realized that the lawyer is recording the  
24 proffer and they say, are you recording? And so they stop.

09:16AM

25 And he stops his recording, and he agrees to preserve it and

1 turn it over to the Government, and then the Government starts  
2 recording at that point in time. So the transcript that we  
3 have is from the second half.

09:17AM 4 THE COURT: All right. And the -- all right. So  
5 what's the -- so what's the status of the -- if the Government  
6 takes the position that the portions that Meister claims are  
7 attorney/client privilege shouldn't be disclosed, I assume  
8 there's no problem with editing or preparing a transcript and  
9 providing the defense with the balance of the transcript.

09:17AM 10 MS. DRAGALIN: Your Honor, just for the record,  
11 the Government does not have a copy of that recording from  
12 Mr. Meister. He was going to give it to us, but around that  
13 same time the defense notified us that they took the position  
14 that, if Mr. Meister provided a copy of that recording, he  
09:17AM 15 would be waiving privilege. So, therefore, Mr. Meister is  
16 still asserting privilege and has not provided a copy of that  
17 first half of the recording to the Government. So the  
18 Government does not have it in its possession. Only  
19 Mr. Meister does.

09:18AM 20 MR. SNYDER: Right. And it's laid out in the  
21 declaration. It looked like we were going to have an agreement  
22 at the time when we made our position --

23 THE COURT: I don't want to digress on this  
24 issue. I assume at some point in time we will have to deal  
09:18AM 25 with that issue. I was just under the, I guess, mistaken

1 assumption that the transcript that was attached was the  
2 transcript.

3 In any event, I did begin or noted that I had  
4 reviewed in the course of my search for these various 302s and  
09:18AM 5 the transcript Mr. Snyder's declaration. In reading -- well,  
6 first of all, let me ask. Is the January 302 somewhere in this  
7 record?

8 MS. ALÉ: Your Honor, I believed that it was, and  
9 I apologize that I did not attach the 302s or transcripts to  
09:19AM 10 the motion. It was an attempt to cut down on the paper, but I  
11 see now that it created more work for the Court. So I  
12 apologize.

13 THE COURT: Well, I can't find it anywhere. It  
14 just doesn't exist in the -- there's no -- there's no citation  
09:19AM 15 to the January 6, 2019, 302. I just don't see it.

16 MS. ALÉ: I apologize if that's the case,  
17 Your Honor. I can submit it --

18 THE COURT: Is it the case?

19 MS. ALÉ: I don't know. I believed that it was  
09:19AM 20 part of the record, but if the Court was not able to find it, I  
21 will submit an exhibit this morning once the hearing is  
22 concluded.

23 THE COURT: All right. I didn't look at every  
24 document. I was trying to find these, and I was using the  
09:20AM 25 citations. And why you're referring me to documents -- other

1 documents such as 365 and 341 to go find these exhibits, you  
2 know, I spend enough time in this case. I don't have time to  
3 go looking for documents.

09:20AM 4 You have a copy of the Goldman plea agreement, do  
5 you not?

6 MS. ALÉ: Yes, Your Honor.

7 THE COURT: All right. That was not attached  
8 either.

9 MS. ALÉ: Correct.

09:20AM 10 THE COURT: All right. So it seems to me, based  
11 upon Mr. Snyder's declaration that I just referred to that was  
12 filed in February of 2022, I don't agree necessarily with  
13 Mr. Snyder's characterization of some of the items he includes  
14 in his declaration although, with respect to the second  
09:21AM 15 proffer, I have no way of disputing or questioning the  
16 statements in the declaration because I have nothing to compare  
17 them with.

18 But it seems to me, based upon this declaration  
19 back in February -- I guess that's not too long ago -- February  
09:21AM 20 of 2022, that the Government with respect to the example that  
21 you're using to support the production of this cooperator --  
22 cooperator's statements, schedules, whatever else is in the  
23 category, has fully complied with its discovery obligations as  
24 to Company M, Mr. Goldman, and Executive M.

09:22AM 25 Are we still using the initials and the letters

1 for those two?

2 MS. DRAGALIN: No, Your Honor. We can use their  
3 true identities which is Carmel Partners and Neils, N-e-i-l-s,  
4 Cotter.

09:22AM

5 THE COURT: C-o-t-t-e-r.

6 So in the -- in Mr. Snyder's declaration, he  
7 begins the declaration by saying the alleged bribe involving  
8 Company M, which is Carmel Partners, is supported by the  
9 testimony of a single cooperator Morrie Goldman who reversed  
10 his factual account in exchange for leniency. Everyone else  
11 supposedly involved in the bribe denies that it occurred, and  
12 no documents memorialize a quid pro quo.

09:22AM

13 It goes on to say that obviously the supposed  
14 bribe by Mr. Huizar categorically denies it. The supposed  
15 briber, Executive M or Mr. Cotter, categorically denied it in  
16 multiple meetings with the Government and in surreptitious  
17 recorded stings.

09:23AM

18 I assume that you have the -- all of the 302s of  
19 Mr. Cotter's interviews with the Government and you also have  
20 recordings of -- made by apparently Mr. Cotter in what  
21 Mr. Snyder characterized as recorded stings? You have all  
22 those?

09:23AM

23 MS. ALÉ: Yes, Your Honor. We do have those.

24 THE COURT: Who are the recordings with?

09:23AM

25 MS. ALÉ: I believe they are with Mr. Goldman.



1 He was the one who was doing -- making the calls.

2 THE COURT: All right. And then it goes on to  
3 state every other Company M executive or employee involved in  
4 project M, which is the -- which is Mateo Project; correct?

09:24AM

5 MS. DRAGALIN: Yes, Your Honor.

6 THE COURT: Categorically deny knowledge of a  
7 bribe. So I assume there are documents or 302s or some other  
8 form of evidence as to every other Company M executive denying  
9 the knowledge of a bribe? You have all that information?

09:24AM

10 MS. ALÉ: We have that information, Your Honor.

11 THE COURT: Okay. And then Company M signed a  
12 non-prosecution agreement with no admission of criminal  
13 liability. I take it that you have a copy of the  
14 non-prosecution agreement?

09:24AM

15 MS. ALÉ: Yes. We do have that, Your Honor.

16 But --

17 THE COURT: Okay.

18 MS. ALÉ: It's everything in between that we  
19 don't have.

09:24AM

20 THE COURT: It's what?

21 MS. ALÉ: It's everything in between from where  
22 they started with the denials to when they finally entered a  
23 non-prosecution agreement. We don't have the communications  
24 that led to that. All of a sudden in September 2020, I  
09:25AM 25 believe, four Company M or Mateo Project executives or

1 Carmel Partners executives sat down for interviews with the  
2 Government. What prompted those interviews after all four  
3 executives denied any liability, after they refused to speak  
4 with the Government we don't know. And that's part of what  
09:25AM 5 we're asking for. We need to tell the story of how --

6 THE COURT: Wait a minute. I'm confused. So the  
7 Executive M -- you have all the interviews for -- Mr. Cotter  
8 denies in multiple meetings. You have all the 302s with the  
9 multiple meetings with the Government, and you have the phone  
09:25AM 10 conversations of the transcripts of the recordings with  
11 Mr. Goldman. You have all that. In that he apparently,  
12 according to the Snyder declarations, categorically denies  
13 there was a bribe; right?

14 MS. ALÉ: That's correct, Your Honor.

09:26AM 15 THE COURT: Does he change his position now?

16 MS. ALÉ: He doesn't change his position as to  
17 the bribe, but he does enter a non-prosecution agreement.  
18 Excuse me, Your Honor.

19 THE COURT: So what happened -- I mean, so what's  
09:26AM 20 the point if -- if you have all this information with respect  
21 to executive -- Mr. Cotter who denies that there were bribes  
22 and they entered into a non-prosecution agreement, what more do  
23 you need?

24 MS. ALÉ: I'm sorry, Your Honor?

09:26AM 25 THE COURT: I'm curious to know what Mr. Cotter

1 believed he was paying \$100,000 for to the various  
2 contributions that he made to PAC A and PAC B and the result  
3 that the Mateo Project was not only approved at the  
4 PLUM Committee but also it was approved in accordance with the  
09:27AM 5 Carmel Partners's request that the 11 percent low income  
6 housing provision be reduced, and ultimately it was approved I  
7 think at 4 percent. In any event, that's neither here nor  
8 there.

9 I just don't understand what it is you're missing  
09:27AM 10 in between these interviews where he denies it was a bribe and  
11 the non-prosecution agreement. Why do you need that  
12 information? I mean, you already have a record that he  
13 apparently is going to get on the witness stand and he's going  
14 to testify that the hundred -- whatever it was. Was it a  
09:28AM 15 hundred thousand dollars that was paid?

16 MS. ALÉ: I believe so, yes, Your Honor.

17 THE COURT: He is going to testify that, given  
18 the various payments he made -- I think they were 25,000,  
19 25,000, and then there was an additional I think in connection  
09:28AM 20 with the -- at least the allegations in the First Superseding  
21 Indictment when apparently, as Mr. Lee ran into labor union  
22 problems, that the Mateo Project ran into labor union problems,  
23 and there was an additional request or ask for an additional I  
24 believe it was \$50,000 in connection with resolving that  
09:28AM 25 particular labor issue with respect to the Mateo Project.

1                   So what is it that you think? That the  
2 Government is going to have some surprise with respect to  
3 Mr. Cotter's testimony at trial?

09:29AM 4                   MR. SNYDER: Your Honor, do you mind if I say  
5 something about this? I know Ms. Alé is arguing, but I'm  
6 pretty familiar with Mateo.

7                   So if I can answer your question, so kind of the  
8 history of what happened here, at least as I understand it --  
9 and we're trying to piece this together as best as possible --  
09:29AM 10 is that, you know, this investigation --

11                  THE COURT: First of all, it's pretty easy to  
12 piece together based upon the allegations of the First  
13 Superseding Indictment.

14                  MR. SNYDER: Right. So that's --

09:29AM 15                  THE COURT: And the First Superseding Indictment,  
16 those overt acts in connection with the Mateo Project which  
17 begin at 241 are pretty consistent also with the -- as I went  
18 back and tried to match some of the items in these various  
19 overt acts are consistent with the factual basis for the plea  
09:30AM 20 that Mr. Goldman entered into.

21                  MR. SNYDER: If you will just give me a second, I  
22 will explain very briefly kind of what's happening.

23                  So the First Superseding Indictment and the pleas  
24 are the end result of a long process. As we understand it,  
09:30AM 25 what happened here is that this investigation starts and the

1 Government starts reaching out to all of the potential  
2 witnesses in this case. I believe -- we don't have  
3 communications for everyone, but I believe that the position  
4 that each of the Carmel executives took at the outset is, if  
09:30AM 5 you bring us into the grand jury or if you bring us to your  
6 office, we will refuse to testify under an invocation.

7 At some point between let's say the beginning of  
8 2020 and September, there were communications between the  
9 Government and the lawyers for each of the executives at  
09:31AM 10 Carmel. These people are represented by extremely talented  
11 lawyers, you know, people who are some of the most reputable  
12 lawyers in the country or the state. They're not going to walk  
13 their clients into a meeting without knowing what's happening.

14 At some point between, you know, early January of  
09:31AM 15 2020 and September when they all show up to meet, there is some  
16 sort of understanding. The way that cooperation works in a  
17 case like this is that --

18 THE COURT: You don't have to tell me how  
19 cooperation works because I read your papers, and what you left  
09:31AM 20 out of how cooperation works is that, when somebody is asked to  
21 or consideration -- considering cooperating with the  
22 Government, the flip side of what you argue is that that  
23 cooperator would typically go to an initial meeting with the  
24 prosecutors and his counsel to get an understanding of what the  
09:32AM 25 nature and extent of what the Government is investigating. And

1 then that cooperator, who may not have all the information  
2 available to be able to proffer to the Government on that  
3 particular initial meeting goes back, reviews records and text  
4 messages and any other items that may assist to refresh the  
09:32AM 5 memory of the witness, because these events take place several  
6 years ago, and then goes back to a second session with the  
7 Government and is able to more intelligently make a pitch to  
8 the Government that this particular witness does have  
9 information that may be of some value to the Government.

09:32AM 10 MR. SNYDER: So I don't think that's how it  
11 worked in this case.

12 THE COURT: I'm not -- you're talking -- you were  
13 talking about in general you were going to educate me in terms  
14 of how cooperation with the Government works. I don't need  
09:32AM 15 that education because I've been on both sides and I fully  
16 understand the process.

17 MR. SNYDER: Understood. I think -- I think the  
18 point is about how it's worked in this case which is the  
19 lawyers for the cooperators and the key witnesses have been  
09:33AM 20 conduits for information before and after the proffer. So,  
21 yes, we have 302s from the proffers but the 302s, like the plea  
22 agreements, like the First Superseding Indictments are the end  
23 result of a process where, before someone comes in to sit with  
24 the Government, it's not -- it's not like, you know, they don't  
09:33AM 25 have a theory coming in. Before someone comes in to sit with

1 the Government, there are communications with their lawyers.  
2 Those communications exist. I don't think there's any dispute  
3 they exist. There were phone calls.

09:33AM

4 THE COURT: Communications with their lawyers,  
5 obviously they exist.

6 MR. SNYDER: Right.

09:34AM

7 THE COURT: Lawyers communicate with their  
8 clients because lawyers need to understand what the facts are  
9 that the client has so that client can or cannot be considered  
10 as having information that the Government needs or doesn't  
11 need.

09:34AM

12 MR. SNYDER: I mean, communications between the  
13 lawyers and the Government. So in advance of these meetings  
14 and then after the meetings. We have all -- each of us I think  
15 in this case have had this experience where someone goes in and  
16 they sit down and then there's feedback provided about, well,  
17 we think this was right. We don't think that was right. There  
18 may be a number of calls or e-mails or communications. That  
19 all goes into what then is said next.

09:34AM

20 I will turn it back over to Ms. Alé. But I think  
21 when it comes to the Carmel Project and those executives in  
22 particular, I think that the history is very clear that they  
23 all initially invoked. At some point after that invocation, no  
24 doubt as a result of communications between the lawyers, they  
25 all come in in the fall of 2020, and they all sit for an

09:34AM

1 interview, and shortly thereafter there is a non-prosecution  
2 agreed to, and none of those people are charged.

09:35AM 3 That didn't just happen kind of with those being  
4 the only data points. What must have happened in between there  
5 is that the lawyers were going back and forth both before and  
6 after those proffers. There were negotiations about the  
7 non-prosecution agreement. No doubt there was some  
8 conversation about who was going to be charged and who wasn't  
9 going to be charged if they came in and if they talked and what  
09:35AM 10 the Government's view of the case was. And we don't have any  
11 of that. Yes, we have the 302s from the proffers. We have the  
12 First Superseding Indictment. We have the plea agreement that  
13 the Government drafted for Morrie Goldman. But that's like  
14 giving us the end result without showing us how the process  
09:35AM 15 happened.

16 What they want to do is they want to put on the  
17 end result of this cooperation without letting us get into and  
18 show the jury, well, how did that product come about?

09:35AM 19 THE COURT: The end result of the process was a  
20 non-prosecution agreement.

21 MR. SNYDER: Right. And the question is --

22 THE COURT: So.

23 MR. SNYDER: So why -- I mean, I think the  
24 question is, well, if the Government's theory of this case is  
09:36AM 25 Neils Cotter bribed a sitting city councilman, right, and



1 people in this multi-billion dollar private equity firm either  
2 knew about or there would be imputed knowledge to the firm, why  
3 were none of those people charged? I think that's a legitimate  
4 question to ask. And I think the Court was even just alluding  
5 to that.

09:36AM

6 Well, the reason they're not charged is either  
7 there's something else going on behind the scenes or there's a  
8 question about the facts or there's a question about the  
9 information. All we have is the end result which the  
10 Government wants to present. And what we're asking to do,  
11 which we're entitled to do, is to get at what's going on behind  
12 the scenes and to see how that end result was created.

09:36AM

13 THE COURT: But see, now you're being more  
14 factually specific, but none of that is in the motion, and  
15 that's the problem I have with the motion. I'm supposed to be  
16 piecing together bits and pieces from missing documents because  
17 you have to make a showing. And there hasn't been any showing.  
18 The first time I've heard about these series of executives that  
19 have been parading into the U.S. Attorney's Office all  
20 represented by superior counsel and whatever you suspect they  
21 were doing or not doing, that's not in front of me. And that's  
22 the problem I have with the motion.

09:37AM

09:37AM

23 You continually ask me to rule on things on an  
24 inadequate record, and I'm not going to do that. Your  
25 declaration enlightens me in terms of -- I take it Executive M

09:37AM

1 is going to continue -- Mr. Cotter is going to continually deny  
2 that the hundred thousand dollars that apparently he was the  
3 head of this Mateo Project was contributing to the various PACs  
4 had nothing to do with the bribe. I guess it was just a normal  
09:38AM 5 way that Carmel Partners did business.

6 MR. SNYDER: Well, I think the reality of what's  
7 going to happen is that, when we want to call Neils Cotter to  
8 testify at trial to say exactly that, his lawyer, who is well  
9 qualified, is going to say, if you call Mr. Cotter, he's going  
09:38AM 10 to invoke.

11 So what ends up happening is through this process  
12 the Government immunized some people. It leaves some people  
13 out there in the wind like Mr. Cotter who, if called to  
14 testify, would say that he didn't bribe. He wasn't involved in  
09:38AM 15 a quid pro quo. And so -- so I think what we're getting at --  
16 and this is, just as we've been talking about, this is just one  
17 example, but it's one example of an overall process which has  
18 gone into shaping the end result which is the First Superseding  
19 Indictment that the Court has seen which is the 302s that we  
09:39AM 20 have. And what we're trying to get at is, well, what was  
21 behind that product, the end product? And we're entitled to  
22 that.

23 THE COURT: Well, I don't think you are based  
24 upon the showing. In any event, so why can't you put into  
09:39AM 25 evidence the non-prosecution agreement?

1 MS. ALÉ: Your Honor, and that was -- again, I  
2 drafted the motion, and I apologize about that.

3 Again, my attempt at directing the Court's  
4 attention to where the non-prosecution agreements were found  
09:39AM 5 was clearly an error but an attempt to limit the number of  
6 exhibits and things that would be clouding the record. So if  
7 the Court would like, I can refile the motion with the  
8 necessary exhibits for the Court's review.

9 THE COURT: Well, in my view, you haven't made a  
09:39AM 10 sufficient showing. I mean, you use -- you call to my  
11 attention an example which is the Goldman/Mateo Project and  
12 Mr. Cotter and Carmel Partners, and I spent a good couple days  
13 trying to understand the transaction and relationship to the  
14 First Superseding Indictment as well as Mr. Goldman's factual  
09:40AM 15 basis for the plea.

16 And uncovering or discovering Mr. Snyder's  
17 declaration, I conclude and I continue to conclude that the  
18 Government has, up to this point in time, given the information  
19 that's included in this declaration, has complied with its  
09:40AM 20 discovery obligations. If there's more out there -- apparently  
21 there is more out there that hasn't been presented to the  
22 Court, I'm here to rule. But I'm not going to continue to  
23 review these motions and make rulings on an inadequate record.

24 All right. So does anybody have anything else  
09:41AM 25 they want to say because I'm going to rule?

1 MR. NEUMAN: Can I say something, Your Honor?

2 THE COURT: Sure.

3 MR. NEUMAN: This is -- we joined the motion for  
4 a variety of reasons. But it really sort of came to light in  
09:41AM 5 the last week why we need these communications between counsel  
6 and the Government.

7 We on Friday got a 302 of a March 2019 meeting  
8 between Justin Kim, his attorney, and the Government. And this  
9 302 was drafted ten days ago. We had no record that this  
09:41AM 10 meeting occurred prior to receiving this 302. We would have  
11 known about it, presumably, if we had communications between  
12 counsel and the Government. I have my theories of why we got  
13 it now. I think it has to do with the motions in limine that  
14 are pending. But strangely, here we are, you know, a month  
09:42AM 15 before trial getting a 302 that is documenting a purported  
16 meeting over three years ago for which there is no agent notes  
17 we're being told.

18 And it really demonstrates why we need to see  
19 that back-and-forth between counsel and -- defense counsel and  
09:42AM 20 the Government counsel. We need to understand what other  
21 meetings potentially are out there, what other discussions are  
22 out there. How did Mr. Kim in this case -- this is  
23 Justin Kim's, I think, his first, quote/unquote, cooperation  
24 meeting with the Government. You know, where did this come  
09:42AM 25 from? And are there other meetings that we don't know about

1 that the Government may have forgotten to write a 302 about at  
2 the time?

3 THE COURT: Well, I assume that the Government  
4 has until, what is it, April -- what's today? -- April 29th  
09:43AM 5 under the current schedule to provide all the *Brady/Giglio*  
6 material under the Lee scheduling order as well as the  
7 *Jencks Act* material on April 29th.

8 Again, to the extent the Government wants to run  
9 the risk of not disclosing what they're obligated to disclose,  
09:43AM 10 they may end up in the same place that the Government ended up  
11 in the Avenatti case, and that is a dismissal.

12 MR. NEUMAN: That may be, Your Honor, and I  
13 appreciate the comment. I think the concern here, as I read  
14 this 302, I don't think the Government would view this as  
09:43AM 15 *Brady*. I think the Government would say this is potentially  
16 inculpatory of our client.

17 But my concern is what else is out there that is  
18 relevant to my case? I need to know when Mr. Kim was meeting  
19 with the Government, what his lawyer was negotiating with the  
09:43AM 20 Government. As the Court knows, he's the central witness  
21 against my client, and this sort of three years later  
22 production gives me real concern.

23 THE COURT: All right. Mr. Jenkins, what about  
24 the more pressing and that is Mr. Neuman, who we're set for a  
09:44AM 25 June trial, and Government's obligations -- I don't have all

1 the dates in front of me, but they seem to be coming up fairly  
2 soon.

3 MR. JENKINS: Yes, Your Honor. And Mr. Neuman's  
4 statement is exactly a product of that. We continue to prepare  
09:44AM 5 for, analyze what discovery has been produced, what discovery  
6 has not been produced, what's been redacted, what needs to be  
7 unredacted. As the Court just noted, the production he just  
8 explained was produced in advance of the Court's deadline. I  
9 believe all other deadlines have been met with and will

09:44AM 10 continue to be met with by the deadline or, if not, in advance.  
11 THE COURT: What about this current 302 that was  
12 just recently produced? What's the history behind that?

13 MR. JENKINS: So as we prepare for that  
14 production of -- what the Government is currently doing is  
09:44AM 15 looking for basically everything Justin Kim related. As the  
16 Court may recall, one of the directives from a prior motion to  
17 compel related to Justin Kim --

18 THE COURT: You're going to have to get closer to  
19 the microphone. Your voice is trailing.

09:45AM 20 MR. JENKINS: So one of the last relevant court  
21 directives was related to a prior motion to compel related to  
22 Justin Kim because Justin Kim had provided information related  
23 to Defendant Huizar, Defendant Lee, and others. And so there  
24 are redactions. So one of the things the Government has went  
09:45AM 25 back and done and reviewed and unredacted a lot of information

1 consistent with the Court's order and in that same process  
2 reviewing Justin Kim references in other case files.

09:45AM 3 And one of the things that AUSA Dragalin noticed  
4 was that there was a calendar entry or a meeting that existed  
5 for which there was not a report, and so she identified that  
6 through that diligent process and got a report drafted to  
7 document exactly what Mr. Neuman just pointed out, something  
8 that is what, we would say, is significantly inculpatory.

09:46AM 9 The existence of the meeting was documented and  
10 provided to them in advance of the deadline of the trial. We  
11 will continue to, of course -- I think Mr. Neuman is correct  
12 that that highlights the need to go through the exact process  
13 we are doing collectively. I think Ms. Dragalin's  
14 identification of that meeting is corroborative of those  
09:46AM 15 efforts, Your Honor.

16 THE COURT: When was the meeting and who  
17 participated in the meeting?

18 MR. JENKINS: The meeting was March 18th --  
19 March 2019.

09:46AM 20 MR. NEUMAN: March 19, 2019, according to the  
21 302. Present were Mr. Kim, his attorney David Vaughn, and  
22 Ms. Dragalin and Mr. Jenkins according to the 302.

23 MR. JENKINS: And, in addition, the agent who  
24 authored the report Tony Logan, but otherwise that is correct.

09:46AM 25 Thank you, Mr. Neuman.

1 THE COURT: What was the sum and substance of  
2 that meeting?

3 MR. JENKINS: At this point I will similarly hand  
4 off the baton, with the Court's indulgence, to AUSA Dragalin  
09:47AM 5 who located this document. Or meeting --

6 THE COURT: It wasn't a document. It was some  
7 reference to a meeting somewhere and a document was prepared to  
8 memorialize the meeting?

9 MR. JENKINS: That is correct, Your Honor.

09:47AM 10 THE COURT: Okay.

11 MS. DRAGALIN: Yes, Your Honor. On March 20th --

12 THE COURT: You can remain seated.

13 MS. DRAGALIN: On March 20th Justin Kim met with  
14 David Lee and recorded his meeting with David Lee. Transcripts  
09:47AM 15 of that recorded meeting have been produced. As we were  
16 preparing for trial, I recalled that, obviously to be able to  
17 record that meeting, Justin Kim must have been given a  
18 recording device, and it reminded me that we met with Mr. Kim  
19 before that recorded meeting to instruct him how to use the  
09:47AM 20 device and to give him instructions about the recorded meeting  
21 that he was to have the very next day.

22 And so the meeting we had with Mr. Kim and his  
23 counsel was very limited to just the recording device and  
24 instructions on what to say during that recorded meeting the  
09:48AM 25 next day. And so the report that was drafted reflected the



1 information we learned from Mr. Kim during that short meeting,  
2 and it was before he sat down to actually proffer all of the  
3 information he subsequently told us about later.

09:48AM 4 MR. NEUMAN: And so, Your Honor, that summary by  
5 Ms. Dragalin only highlights the point that I'm making because  
6 none of what she just said is in that 302. And so there is a  
7 problem between what was going on at the time this calendar  
8 entry that exists. The 302 doesn't say anything about giving  
9 him a recording device, instructing him on the recording  
09:48AM 10 device. None of that is in here.

11 It relates a conversation or a statement by  
12 Mr. Kim about conversations he supposedly had with my client.  
13 This is old. And I'm not complaining that it was produced now.  
14 They're within -- I'm not saying it's late production. What  
09:48AM 15 I'm saying is they didn't know about it until she happened to  
16 see a calendar entry. We didn't know. We have been wondering  
17 how did this recording come to be, the March 20th recording.  
18 And now my concern is what else is out there that they might  
19 miss, not necessarily exculpatory in that sense but certainly  
09:49AM 20 relevant to the defense and how Justin Kim came to make the  
21 statements he makes about my client.

22 THE COURT: Well, I'm sure that they're going to  
23 continue their efforts in connection with their preparation for  
24 trial.

09:49AM 25 All right. Anybody want to add anything else

1 before I rule? Anything for the Government?

2 MS. DRAGALIN: No, Your Honor.

3 THE COURT: Defense?

4 MS. ALÉ: Nothing else.

09:49AM 5 THE COURT: The Government makes the -- I'm  
6 sorry. The Court makes the following ruling:

7 With respect to the witness and cooperator  
8 devices, the defendants, as I indicated, seek imaged copies of  
9 the digital devices for the nine cooperating defendants and  
09:50AM 10 witnesses identified in their motion. Specifically, the  
11 devices at issue include forensic copies of imaged devices and  
12 accounts for seven of these individuals that were searched  
13 pursuant to search warrants. Esparza also consented to the  
14 search and imaging of three additional devices provided the  
09:50AM 15 search was consistent with the scope of the original omnibus  
16 search warrant that was issued in November of 2018.

17 Businessperson A's phone was searched and imaged  
18 pursuant to a limited consent. Moreover, the Government never  
19 executed a search warrant or obtained consent to search and has  
09:50AM 20 not searched the devices belonging to Mr. Morrie Goldman. It,  
21 therefore, does not have any forensic imaging of his devices or  
22 accounts in his possession.

23 The Government contends the defendants fail to  
24 establish that it has possession of the devices or that any  
09:51AM 25 information contained therein would be material to their

1 defense.

2 As to possession, according to the 9th Circuit in  
3 the *United States versus Bryan*, B-r-y-a-n, at 868 F.2d 1032, a  
4 document is in the possession, custody, or control of the  
09:51AM 5 Government if the prosecutor has knowledge of and access to the  
6 documents sought by the defendant.

7 The Government originally obtained search  
8 warrants for most of the digital devices and accounts at issue  
9 in this motion. The Government imaged and searched these items  
09:51AM 10 for material that fell within the scope of the warrant and  
11 later produced all of that data to the defendants. The  
12 Government utilized the same process with respect to the  
13 devices imaged and searched pursuant to the consents.

14 The Government claims it no longer has legal  
09:51AM 15 authority to further access and search any of these devices  
16 because the warrants have expired and none of the individuals  
17 have consented to any further searches or disclosure, and in  
18 fact, counsel for those defendants or individuals have  
19 submitted written objections which are attached to the  
09:52AM 20 Government's opposition.

21 The Court rejects the defendants' contention that  
22 the Government continues to have authority to either search the  
23 devices again for discoverable material or simply turn them  
24 over to the defendants. The Court finds the district  
09:52AM 25 court's -- district court case *United States versus Collins* at

1 409 F.Supp. 3d is instructive. In *Collins* defendants asked the  
2 Court to -- asked the Court to order the Government to search  
3 an uncharged co-conspirator's nonresponsive iCloud data that  
4 has been searched pursuant to a search warrant for *Brady* and  
09:52AM 5 Rule 16 material. The district court denied the motion because  
6 the Government does not have the legal authority to go back and  
7 search materials that are outside the scope of the search  
8 warrant and thus did not have possession.

9 The Court noted that, as we have in this case,  
09:53AM 10 the third party has a privacy interest in the data, the  
11 Government obtained that data through the use of a search  
12 warrant, and as a result of the Government's possession of and  
13 ability to review that data was necessarily circumscribed by  
14 the 4th Amendment.

09:53AM 15 Defendants attempted to distinguish *Collins* by  
16 arguing that in that case, unlike here, the Government had  
17 initially searched the data for potential *Brady* Rule 16  
18 material. The *Collins* court however specifically stated that  
19 it found the defendant's argument legally flawed even if it  
09:53AM 20 assumed that the Government's initial search pursuant to the  
21 warrant was insufficient under *Brady* and Rule 16.

22 Like *Collins*, the basic premise of the  
23 defendants' argument is that the *Brady* obligation somehow  
24 trumps an individual's 4th Amendment rights, but in my view,  
09:53AM 25 that's simply not the case. The Court concludes that, because

1 the Government is without the requisite legal authority, it is  
2 not in the possession of the data for discovery purposes. The  
3 Government's possession of the devices and the data that were  
4 obtained by search warrant is necessarily circumscribed by the  
09:54AM 5 4th Amendment nor have any of the individuals who own the  
6 devices searched pursuant to the warrant consented to a further  
7 review of their data.

8 The Court arrives at the same conclusion with  
9 respect to the devices that were searched and imaged pursuant  
09:54AM 10 to the consent agreements. The two individuals who consented  
11 did so under specific limiting conditions. Those conditions  
12 circumscribed the Government's legal authority over the data,  
13 devices, and accounts and do not authorize the wholesale  
14 disclosure as sought in this case.

09:54AM 15 Defendants also argue that the cooperation plea  
16 agreements with the cooperating defendants establish the  
17 Government's possession of the devices under *Brady* and Rule 16.  
18 The defendants point out that the cooperating defendants  
19 entered into plea agreements whereby they agreed to produce all  
09:55AM 20 documents, records, and other tangible evidence relating to  
21 matters about which the United States Attorney's Office may  
22 require.

23 In support of their argument, defendants cite  
24 three district court cases concluding that the Government's  
09:55AM 25 ability to require cooperating defendants to produce evidence

1 at its request may establish the requisite possession and  
2 control over such evidence.

3 The Court declines to adopt the reasoning of  
4 those cases under the circumstances of this case. Defendants  
09:55AM 5 are asking to examine the entirety of the individual phone and  
6 e-mail accounts. These items contain private, personal, and  
7 highly sensitive data. Indeed, the entirety of people's lives  
8 in this day and age are typically reflected on their phones,  
9 their messages, and e-mails. A cooperating defendant does not  
09:55AM 10 give up and, frankly, should not have to give up the right to  
11 protect information of the most personal and private nature  
12 when entering into a cooperation agreement with the Government.  
13 This is especially true given that the defendants have failed  
14 to show in any meaningful way that the information they seek  
09:56AM 15 may be material to their defense.

16 As to materiality, a defendant must make a  
17 threshold showing of materiality which requires a presentation  
18 of facts that would tend to show that the Government is in  
19 possession of information helpful to the defense. Neither a  
09:56AM 20 general description of the information sought nor conclusory  
21 allegations of materiality suffice.

22 Defendants make a general claim that the  
23 requested data on the devices and accounts is material because  
24 it may contain information relating to interactions between  
09:56AM 25 Esparza and Kim and other key figures that might allow

1 defendants to develop a defense that cooperators were acting on  
2 their own behalf rather than on behalf of the alleged RICO  
3 enterprise.

09:56AM 4 Defendants provide no specific information  
5 regarding the other cooperating defendants and witnesses. They  
6 offer only a broad general allegation that, because the  
7 Government's case stands or falls on the testimony of numerous  
8 individuals engaged in varying levels of cooperation with the  
9 Government, they're entitled to examine without limitation the  
09:57AM 10 complete devices and accounts of each and every cooperating  
11 witness.

12 The Court concludes that this showing is  
13 speculative and falls well below that required to demonstrate  
14 materiality. Defendants have received voluminous and broad  
09:57AM 15 discovery from these devices, yet fail to indicate with any  
16 particularity what may be missing.

17 The Court agrees with the Government that what  
18 the defendants really seek here is a fishing expedition into  
19 each of the witnesses' and cooperating defendants' personal and  
09:57AM 20 private information to which they are simply not entitled.

21 The next category, which is the witness and  
22 cooperator communications, the Government represents it has  
23 made broad disclosures and produced discovery beyond its  
24 obligations in this case including reports of witnesses'  
09:58AM 25 interviews, notes from these interviews, and text messages and

1 e-mails between witnesses and agents.

2           The Government has also produced certain  
3 substantive communications between the Government and counsel  
4 for witnesses where appropriate and consistent with its  
09:58AM 5 discovery obligations. Despite this discovery, defendants now  
6 request that the Government also produce all communications  
7 between the Government and any witnesses or cooperators and  
8 their counsel including non-privileged notes, scheduling  
9 notices, and all records of communications. The Government  
09:58AM 10 notes that, because it has already produced reports of witness  
11 interviews, the material in dispute consists of communications  
12 between the Government and third parties and their counsel.

13           As I indicated, the Court is not entirely clear  
14 as to what has already been produced that complies with the  
09:58AM 15 defendants' broad discovery request but assumes, based upon the  
16 defendants' reply, that, while the Government has produced  
17 communications containing the substance of witness statements,  
18 it has not produced a full set of the scheduling notices and  
19 e-mails.

09:59AM 20           The Government's letter to the public defender --  
21 federal public defenders dated April 28th to which the  
22 Government cites to show what has been produced provides some  
23 clarification surrounding the parties' discussion on the matter  
24 but does not refer to definitive categories or give the Court  
09:59AM 25 the clarity it needs in order to make any ruling.



1                   So for all of the -- the defendant contends that  
2                   a full set of the requested communications is material in order  
3                   to attack the character and quality of the investigation  
4                   including attacking the means by which the Government has  
09:59AM 5                   handled cooperating witnesses. In their reply, the defendants  
6                   argue the timing of the contacts between counsel for  
7                   cooperating defendants and the Government may help establish  
8                   how witnesses' testimony was shaped and changed in order to  
9                   align with the Government's theory and obtain greater benefits  
10:00AM 10                  for themselves.

11                  The Government claims that it has produced and  
12                  will continue to produce Rule 16, *Brady/Giglio*, and *Jencks Act*  
13                  discovery consistent with its duty to make decisions about what  
14                  falls within this category.

10:00AM 15                  The Court is confident that the Government will  
16                  continue to comply with all its discovery obligations in this  
17                  case. Indeed, the Court has requested and the Government has  
18                  consented to what the Court considers and has referred to as an  
19                  open file discovery in this case. Based upon the prosecution  
10:00AM 20                  team handling of this case to date, the Court concludes that  
21                  the prosecutors fully understand and will continue to comply  
22                  with their discovery obligations.

23                  The Government's understanding and compliance  
24                  with its obligation is evidenced by the incredibly detailed  
10:00AM 25                  description defendants were able to make in their motion and

1 reply briefs and in Mr. Snyder's declaration that I have been  
2 referring to regarding the alleged changes in Goldman and  
3 Businessperson A's testimony which are obviously based on  
4 discovery already produced and can and will be used to impeach  
10:01AM 5 both witnesses.

6 The Court thus denies the defendants' motion for  
7 additional discovery relating to those communications. Should  
8 the defendants believe that the Government is not in compliance  
9 with its discovery obligations, the defendants are free to  
10:01AM 10 raise these issues at an appropriate later point in time,  
11 hopefully with a full record so I can make a determination  
12 without spending an enormous amount of time going through all  
13 of the documents.

14 So for all the foregoing reasons, the Court  
10:01AM 15 denies the defendants' motion to compel.

16 All right. We have another issue that I wanted  
17 to discuss. Mr. Steingard, this relates to what I discovered  
18 this weekend is yet to be ruled on, and that is the pending  
19 request for Defendant Shen Zhen New World's second application  
10:02AM 20 for issuance of early return of subpoenas duces tecum that was  
21 filed March 21st of 2022. It appears as docket No. 44. This  
22 was filed after I issued in July of last year a minute order  
23 denying the ex parte application for issuance of Rule 17  
24 subpoenas. The denial was without prejudice.

10:03AM 25 I also issued a separate minute order that, if

1 defendant was going to file a revised ex parte application and  
2 continued to request the gag order, that the parties prepare a  
3 joint statement setting forth their respective positions with  
4 respect to the gag order. That appears as docket No. 197.

10:03AM

5 And as I indicated, on March 31st you filed the  
6 second ex parte application. Thereafter, there were requests  
7 which I granted for continuances of the joint statement, but  
8 that joint statement was filed on March 29th. That doesn't  
9 make any sense with respect to the -- anyway, it was filed.

10:04AM

10 Let me see if I can find it here. It was filed on March 29th.  
11 It appears as docket No. 415. It was the joint filing re  
12 subpoenas.

10:04AM

13 Mr. Steingard, I will hear from you, but it's --  
14 I want to know how you want to proceed because I haven't -- I'm  
15 not making a final ruling, but my tentative ruling is that I'm  
16 not going to issue a nondisclosure order that the parties or  
17 the persons or parties who are subpoenaed are not going to be  
18 precluded from discussing the subpoena.

10:05AM

19 I'm not sure that you're aware, but I can tell  
20 you my normal practice is that, when a Rule 17 -- a return for  
21 a Rule 17 subpoena the documents are produced, they're produced  
22 to the Court. And the Court then notifies counsel, and all  
23 counsel have an opportunity to review the documents that are  
24 produced. That's my normal practice. I don't know what you

10:05AM

25 want me to do with the ex parte application.

1           Quite frankly, I don't see how any of the  
2 requested documents -- I know the argument is always that they  
3 reveal trial strategy. I can't imagine how any of these  
4 documents reveal trial strategy. There's nothing in your  
10:06AM 5 showing that would give me any indication in terms of what the  
6 trial strategy is save and except for perhaps for paying bribes  
7 with someone else's money.

8           MR. STEINGARD: I'm not sure what the Court  
9 refers to there, but you have several documents before you.

10:06AM 10           THE COURT: Yes.

11           MR. STEINGARD: One, of course, is the ex parte  
12 application -- the ex parte application for a -- for the  
13 subpoena duces tecum. And in that document we have included my  
14 declaration, and that is where for the most part we laid out --  
10:07AM 15 I laid out what I believe would have been the basis for the  
16 nondisclosure. And in the joint filing I referenced that  
17 without getting any more specific because obviously that was  
18 filed in camera. So you would have to circle back, Your Honor,  
19 to the ex parte filed in camera --

10:07AM 20           THE COURT: No. I have that.

21           MR. STEINGARD: I understand. I understand. And  
22 that -- in response to your question that you don't see any  
23 trial strategy issues, I'm simply saying to you that the  
24 showing that we made or we attempted to make would be contained  
10:07AM 25 in that document. If you find that inadequate, then there is

1 your answer. I can't go into that any further in open court,  
2 but I would be prepared, of course, to go in chambers with the  
3 Court.

4 THE COURT: I'm not going to go in chambers. If  
10:08AM 5 you want to file some supplemental declaration -- basically one  
6 of the thrusts, which I don't know is a trial strategy, is  
7 making a more complete record.

8 MR. STEINGARD: Okay. I don't disagree with  
9 that.

10:08AM 10 THE COURT: Okay.

11 MR. STEINGARD: I don't disagree with that as a  
12 partial of what we're trying to do, yes.

13 THE COURT: That's somehow trial strategy?

14 MR. STEINGARD: Well, let's talk in the  
10:08AM 15 hypothetical if that's all right.

16 THE COURT: Sure.

17 MR. STEINGARD: In the hypothetical, the  
18 Government calls an expert witness who says, I reviewed these  
19 ten documents. And in the hypothetical the defense calls an  
10:08AM 20 expert witness that says, I reviewed those ten documents too  
21 but they -- they didn't look at these ten documents which shed  
22 light on the ten that the -- that the Government did look at.  
23 We view that as a trial strategy, vis-à-vis, or in regards to  
24 where we have got a prepared witness -- a prepared expert  
10:09AM 25 witness where the Government -- which would negate, refute,

1     rebut the Government's witness in that hypothetical. I guess I  
2     would call that a trial strategy.

3             THE COURT: Well, you can characterize anything  
4     as a trial strategy.

10:09AM 5             MR. STEINGARD: Well, I guess. But why wouldn't  
6     it be? Why wouldn't it be that we're trying to say we don't  
7     want to be the party to prepare the Government's witnesses?

8             THE COURT: So you're basically saying use the  
9     Rule 17 subpoena in order to obtain documents that you believe  
10:09AM 10     are necessary for impeachment.

11             MR. STEINGARD: I don't think that's necessarily  
12     impeachment. It could be impeachment. Part of it would be  
13     impeachment. If we showed the expert witness the extra ten  
14     documents that the Government hadn't looked at and the witness  
10:10AM 15     said, gee, I've never seen these before, therefore, I can't  
16     comment, that would be impeaching.

17             THE COURT: Well, if you want to file something  
18     else, I will take a look at it. But those are my tentative  
19     views.

10:10AM 20             MR. STEINGARD: That's fine. And could I just  
21     address one other point, Your Honor?

22             THE COURT: Sure.

23             MR. STEINGARD: You mentioned that your normal  
24     practice is to, when the materials are received by the Court,  
10:10AM 25     to call all counsel, it sounds like, and invite them to come

1 and inspect the documents. I would ask that the Court  
2 consider, because this is a defense subpoena, simply providing  
3 those documents to the defense, allowing the defense to make a  
4 determination whether they're going to be used at trial, and if  
10:10AM 5 so, of course, the defense has their own obligations under  
6 Rule 16.

7 THE COURT: Right. Because you're ultimately  
8 going to have to give the documents to the Government in any  
9 event.

10:10AM 10 MR. STEINGARD: Only if they're going to be used.

11 THE COURT: Right. In your hypothetical that  
12 we're talking about, your expert is going to be testifying as  
13 to the missing documents because those ten that the expert  
14 didn't look at, those ten documents are going to have to be  
10:11AM 15 turned over to the defense as part of your obligation.

16 MR. STEINGARD: What I'm saying is, in the  
17 production to the Court in this hypothetical, 20 documents,  
18 50 documents were produced and the defense selected 10 that  
19 they wanted to use, those, of course, would have to be produced  
10:11AM 20 to the Government but not the other 40.

21 THE COURT: Right. That's why all these Rule 17  
22 subpoenas and all this alleged trial strategy, you know,  
23 especially in this case where it's been my effort to make sure  
24 that there are no surprises that occur at the time of trial,  
10:11AM 25 obviously it's more slanted toward making sure that the defense

1 doesn't have any surprises but also that there are no surprises  
2 for the Government although that's a different issue.

3 In any event, I still don't see it. More  
4 importantly, it seems like many of these documents should be  
10:12AM 5 available without the necessity of a subpoena.

6 MR. STEINGARD: I wish that to be true,  
7 Your Honor. I believe the documents we're talking about are  
8 not available to the defense with just a phone call. I wish it  
9 was -- I wish it was different, but I can tell you we have made  
10:12AM 10 phone calls. We haven't --

11 THE COURT: Maybe it takes a visit.

12 MR. STEINGARD: Well, that would be okay. That  
13 would be okay with me.

14 THE COURT: In any event, then you can have --  
10:12AM 15 you know, you can have all of the boxes of documents, and if  
16 they're voluntarily produced to you, you can do whatever you  
17 want with them.

18 MR. STEINGARD: Absolutely right. If that was  
19 the case, we wouldn't have submitted any kind of an application  
10:12AM 20 to the Court. May I just suggest, Your Honor, that you sit on  
21 this for two weeks?

22 THE COURT: Sure.

23 MR. STEINGARD: And give me an effort with  
24 co-counsel --

10:13AM 25 THE COURT: We're talking about an October trial



1 date.

2 MR. STEINGARD: Correct.

3 THE COURT: I know these documents are

4 potentially voluminous, but given -- I think, once they're

10:13AM 5 produced, it should be a fairly easy task to accomplish what I

6 understand you're trying to accomplish.

7 MR. STEINGARD: I agree.

8 THE COURT: So you can -- two weeks, three weeks

9 is fine with me.

10:13AM 10 MR. STEINGARD: Okay. You will have it within

11 two weeks. Again, that will be filed in camera. You already

12 have the joint filing with the Government which lays out our

13 respective positions. You will have a full plate then.

14 THE COURT: Right. And then with the -- of

10:13AM 15 course, again, you know, all this Rule 17 stuff is -- you know

16 exactly what happens, and obviously the request for your gag

17 order or the nondisclosure order is, as soon as a subpoena is

18 served, the first call is to the Government saying, guess what,

19 I got this subpoena. What do I do with it? So that's why all

10:14AM 20 of this to me is just -- in any event.

21 MR. STEINGARD: I agree the system isn't perfect,

22 Your Honor, but it's the one we're playing with. So we have to

23 go -- I agree with you that may well happen. In fact, it

24 likely will happen. But at least we can take steps to try to

10:14AM 25 prevent it.

1 THE COURT: I understand. Maybe somebody should  
2 consider changing Rule 17 to make it work like the defense  
3 lawyers want it to work. I mean, I had a case where I had to  
4 put a stop to the practice -- I didn't understand it -- but the  
10:14AM 5 Federal Public Defender's Office was having Rule 17 subpoenaed  
6 documents delivered to their office instead of delivered to the  
7 Court which I found to be -- not in this case and not any of  
8 these lawyers, but I found that to be highly unusual and put a  
9 stop to that practice quickly.

10:15AM 10 MR. STEINGARD: All right.

11 THE COURT: All right. Anything else?

12 MS. DRAGALIN: Your Honor, we do have the  
13 stipulation to continue the RICO trial for --

14 THE COURT: Right. I was going to sign that  
10:15AM 15 today, but I see Mr. Braun is rising and he had some problem  
16 with --

17 MR. BRAUN: I just thought the last thing we  
18 needed is another motion or hearing in this case. There has  
19 been some issue raised about my competence and communication  
10:15AM 20 with my client in terms of the offers. So I think the simplest  
21 way is for me to just have my client prepare a declaration as  
22 to what his knowledge is and file that with the Court. The  
23 Court can then decide whether or not any further inquiry is  
24 necessary.

10:15AM 25 He's fully prepared to testify, and he's brought

1 all the documents, but I think it would be better just to file  
2 a declaration.

3 THE COURT: Well, that issue has never been  
4 raised with me.

10:16AM 5 MR. BRAUN: It's been raised by the Government  
6 with me, and I think I will just -- if it's okay with the  
7 Court, we will file a declaration by my client saying here's  
8 what he knows about the case, here's what the offers are, and  
9 he's fully aware of them, and that should end that issue.

10:16AM 10 THE COURT: But you're going to file that in  
11 camera.

12 MR. BRAUN: We can do it in public. There's no  
13 issue.

14 THE COURT: All right. Whatever you want, I'm  
10:16AM 15 unaware of the issue. The only issue I was aware of is at one  
16 stage of these proceedings the Government had attached several  
17 e-mails that were exchanged between you and the Government and  
18 the Government rightly was taking offense to some of the  
19 statements that were made in those e-mails.

10:16AM 20 MR. BRAUN: I think they left out some of the  
21 better e-mails. We will put together a declaration,  
22 Your Honor.

23 THE COURT: All right. Well, I am going to sign  
24 that stipulation for a continuance of the trial to February.

10:17AM 25 All right. Anything else?

1 MR. JENKINS: Just to clarify, if Mr. Braun's  
2 position now is that Mr. Chan is waiving to that date, he just  
3 noted it was agreeable, so originally he had objected between  
4 January to February, he's agreeing now, just for the record,  
10:17AM 5 that would be helpful.

6 MR. BRAUN: I hate to be technical. I don't  
7 think you can waive. We can stipulate there's a good cause. I  
8 don't think you have a right to waive a Speedy Trial Act. We  
9 will stipulate to the good cause.

10:17AM 10 THE COURT: Is that sufficient, Mr. Jenkins?

11 MR. JENKINS: That is. Thank you, Your Honor.

12 THE COURT: Do you want to redo the stipulation?

13 MR. JENKINS: I definitely do not, Your Honor.

14 But --

10:17AM 15 THE COURT: The order?

16 MR. JENKINS: We can amend the order, Your Honor.

17 THE COURT: Why don't you just submit an amended  
18 order.

19 All right. How many motions in limine are we  
10:17AM 20 anticipating in the Lee case?

21 MR. NEUMAN: I think there's three.

22 THE COURT: Three?

23 MR. NEUMAN: Yes. And two of them are  
24 relatively -- I will see what the Government's opposition is.

10:18AM 25 Two of them are relatively short. One is longer.

1 THE COURT: All right. In terms of the time  
2 estimate for trial, where are we at?

3 MS. DRAGALIN: Your Honor, we estimate that the  
4 trial -- the Government's case in chief will run approximately  
10:18AM 5 five court days. So we anticipate we would spill it over into  
6 the following week of after June 14th. But we do think we  
7 should be finished by the end of that week.

8 THE COURT: Do you agree, Mr. Neuman? The  
9 reason, I have a custody case that I have to -- I have to try.  
10:18AM 10 I want to make sure that this trial doesn't interfere with that  
11 custody case. How long do you anticipate the defense case to  
12 take?

13 MR. NEUMAN: No more than a day or two if there  
14 is a defense case. I haven't had a chance to talk about this  
10:18AM 15 with the Government. There's I think, just from memory, 23 or  
16 so witnesses on their list. I think some of them are  
17 cumulative and don't have relevant evidence. We will discuss  
18 that with the Government and, as necessary, raise it with the  
19 Court before they testify.

10:19AM 20 THE COURT: Okay.

21 MR. NEUMAN: Given the Court's mention of  
22 scheduling, does the -- I know the Court had concerns about in  
23 custody trials. Is the June 14th date still looking like it's  
24 going to work?

10:19AM 25 THE COURT: The June 14th date I -- I have

1 guarded the June 14th date so we can get this case tried. I  
2 had to set the custody case that I'm referring to to commence  
3 after the June 14th date. It's going to be -- I think we will  
4 have sufficient time.

10:20AM

5 Again, I'm sure you all realize that we're  
6 continuing to operate under this system which I hope we can  
7 abolish. But I have to make a request for a jury panel for a  
8 particular day, and there's no assurance that I will be able to  
9 have a jury panel on June 14th. But I'm going to make some

10:20AM

10 efforts this week to make sure that I can lock in that date  
11 because the timing is going to be such that we're going to  
12 be -- I want to make sure that we get this case tried and allow  
13 my custody case to go because we're all --

10:21AM

14 MR. NEUMAN: I take it this custody case is set  
15 for June 28th. Is that --

16 THE COURT: Yes.

17 MR. NEUMAN: So if the Government is talking five  
18 days, that goes to the 21st or so. I think that's probably  
19 sufficient to get the case at least to the jury by the end of  
20 the week.

10:21AM

21 THE COURT: Right. That's my -- that was my game  
22 plan when I set the custody case for the 28th.

23 MR. NEUMAN: Is the -- maybe we're too far in  
24 advance. Is the Court anticipating the sort of spread out jury  
25 that I see here?

10:21AM

1 THE COURT: This is the way we have been  
2 conducting. We pick a jury in Courtroom 1 and then -- because  
3 we can have a sufficiently -- a larger panel than doing it in  
4 here and I don't have to use the video. And then after we pick  
10:21AM 5 the jury and I give them preliminary instructions, then we come  
6 back up here, and then we spread out consistent with the  
7 numbers that you see which gives us, along with all the  
8 plexiglass, some social distancing.

9 That's an issue I can raise with counsel now. I  
10:22AM 10 have been asking for fully vaccinated juries and have done so  
11 in the last four or five cases that I have tried. Does anybody  
12 have any objection to that?

13 MS. ALÉ: Your Honor, are you asking for Huizar?

14 THE COURT: No. I'm not asking you. I'm asking  
10:22AM 15 Mr. Neuman who is coming to trial on the 14th.

16 MR. NEUMAN: Just off the top, no, but I would  
17 like to have a moment to think if there is any reason.

18 THE COURT: Sure. If you do have an objection,  
19 just let us know. It -- quite frankly, I have noticed that it  
10:22AM 20 really has not had any impact on the composition of the panel.  
21 Although we all know that vaccination plus booster may not  
22 be -- may not be fully protecting everybody, I have noticed,  
23 when I speak to the jurors afterwards -- and Shannon, when she  
24 speaks to them during the day -- they're much, much more  
10:23AM 25 comfortable knowing that the panel -- their fellow jurors are

1 fully vaccinated. Even if we still separate them like this,  
2 they still go on breaks together and it's just -- it makes the  
3 jury panel and it makes the Court more comfortable in terms of  
4 whatever may be happening on June 14th.

10:23AM

5 MR. NEUMAN: That's fine. When does the Court  
6 need an answer? I can get back to you. I just need time.

7 THE COURT: The next couple days.

8 MR. NEUMAN: No problem. Thank you, Your Honor.  
9 We will be a little bit crowded because I anticipate having a  
10 translator between me and my client, an attorney from my firm,  
11 but she will be serving that role.

10:23AM

12 THE COURT: We have the benefit of the back row.  
13 The interpreter typically works through headphones.

14 MR. NEUMAN: Right. I'm not talking about my  
15 client understanding what's happening in court. I'm talking  
16 about he and I being able to talk during the proceedings. My  
17 co-counsel Mr. Seilie will be -- it may be a little more  
18 crowded than it otherwise might be.

10:24AM

19 THE COURT: Okay. All right. Does the  
20 Government have any objection?

10:24AM

21 MR. JENKINS: Provided that the defense agrees,  
22 the Government has no objection.

23 THE COURT: All right. Well, I'm obviously not  
24 going to do it if there's an objection. But I just think  
25 it's -- for whatever is going on with the -- who knows what

10:24AM



1 variant it may be by June 14th.

2 MR. NEUMAN: I take it the Court is not requiring  
3 participants to be masked during the proceedings.

10:25AM

4 THE COURT: I am. The jury -- the last trials  
5 that we have had, the jury has -- the jurors have all worn  
6 masks. I have counsel wear masks unless they're speaking. The  
7 witnesses do have not to -- they have to wear masks -- they  
8 don't have to wear masks while testifying. But you know, we  
9 still have the mask rule in effect. I see everybody is  
10 violating the mask rule this morning.

10:25AM

11 MR. NEUMAN: Followed Government counsel's leads.

12 THE COURT: So I will issue sanctions against  
13 Mr. Jenkins personally for violating the rules.

10:25AM

14 MR. JENKINS: I will endeavor to do better next  
15 time, Your Honor.

16 MR. NEUMAN: Thank you, Your Honor.

17 THE COURT: Thank you very much. We will be in  
18 recess.

19 (Proceedings concluded at 10:25 a.m.)  
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I, MIRANDA ALGORRI, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 19TH DAY OF JUNE, 2022.

/S/ MIRANDA ALGORRI

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MIRANDA ALGORRI, CSR NO. 12743, CRR  
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